



May 1, 2007

Mr. Charles Terreni  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
P. O. Drawer 11649  
Columbia, South Carolina 29211

RE: PSC Docket No. 2007-1-E

Dear Mr. Terreni:

Attached for filing are an original and one copy of Progress Energy Carolinas, Inc.'s Motion For Protective Order and Response In Opposition to Nucor Steel-South Carolina's Motion to Compel in the above-referenced docket.

Yours very truly,

s/

Len S. Anthony  
Deputy General Counsel-Regulatory Affairs

LSA:mhm

c: All Parties of Record (w/encl)

248984

**STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION**

**DOCKET NO. 2007-1-E**

In the Matter of:

Carolina Power & Light Company, d/b/a	)	
Progress Energy Carolinas, Inc., - Annual	)	<b>CERTIFICATE OF SERVICE</b>
Review of Base Rates for Fuel Costs	)	

I, Len S. Anthony, hereby certify that Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.'s ("PEC") Motion for Protective Order and Response to Nucor Steel's Motion to Compel has been served on all parties of record electronically, by hand delivery or by depositing said copy in the United States mail, postage prepaid, addressed as follows this the 1st day of May, 2007:

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s/

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Len S. Anthony  
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Progress Energy Carolinas, Inc.  
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**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2007-1-E**

Carolina Power & Light Company	)	<b>PROGRESS ENERGY</b>
d/b/a Progress Energy Carolinas, Inc.	)	<b>CAROLINAS, INC.'S MOTION</b>
Annual Review of Base Rates for	)	<b>FOR PROTECTIVE ORDER</b>
Fuel costs	)	<b>AND RESPONSE IN</b>
		<b>OPPOSITION TO NUCOR</b>
		<b>STEEL'S MOTION TO COMPEL</b>

Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. ("PEC"), pursuant to Public Service Commission of South Carolina ("PSC") Rules 103-830 through 103-842,<sup>1</sup> moves the PSC for a protective order and submits its response to the Motion to Compel filed by Nucor Steel-South Carolina ("Nucor") in this proceeding. In support thereof, PEC shows the following:

(1) The attorney for PEC to whom all correspondence should be addressed is:

Len S. Anthony  
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<sup>1</sup> On April 27, 2007 the PSC's revised Rules of Practice and Procedure were published in the South Carolina State Register and became effective. While the numbering of the PSC's Rules has changed, for the purposes of the issue now before the PSC as well as this response, there were no substantive changes to the PSC's Rules. For the purposes of this pleading, PEC's cites are to the previous Rule numbers.

(2) On March 30, 2007, Nucor propounded to PEC, and on April 3, 2007 filed with the PSC, Nucor's first discovery request in this proceeding consisting of over 200 items including subparts.

(3) On April 19, 2007, Nucor propounded to PEC, and on April 23, 2007 filed with the PSC, Nucor's second discovery request consisting of over 100 items including subparts.

(4) PEC objected to both discovery requests on the grounds that they violate Rule 33 of the South Carolina Rules of Civil Procedure which limit the number of interrogatories that can be submitted to 50 without first obtaining the approval of the PSC. PSC Rule 103-854 provides that the South Carolina Rules of Civil Procedure apply to discovery in proceedings before the PSC unless the PSC's Rules provide otherwise. PSC Rule 103-851, which governs the issuance of interrogatories, does not address the number of interrogatories a party may propound to another party without first obtaining PSC approval. Because PSC Rule 103-851 does not address the number of interrogatories that may be propounded without PSC approval, it is appropriate to look to Rule 33 of the Rules of Civil Procedure.

(5) PEC has not withheld any information or documents responsive to Nucor's first discovery request based upon PEC's objection pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

(6) The documents responsive to Nucor's first discovery request constitute over twelve (12) feet of paper and responding to the discovery request as a whole required PEC personnel to expend over 300 man hours.



(7) The documents responsive to Nucor's second discovery request are estimated to constitute three (3) feet of paper. PEC anticipates it would require at least another 100 man hours to respond to this discovery request.

(8) Nucor's arguments regarding PSC Rule 103-851 are simply wrong. The fact that Rule 103-851 does not place a limit on the number of interrogatories that can be propounded without PSC approval does not mean there is no limit. As mentioned earlier, PSC Rule 103-854 expressly says that the South Carolina Rules of Civil Procedure govern any matters not covered by Rules 103-850 through 852. Rule 103-851 is silent as to the number of interrogatories that can be issued. Therefore, the application of Rule 33 of the South Carolina Rules of Civil Procedure is appropriate.

(9) The need for the requirement that interrogatories be limited unless otherwise approved by the PSC is highlighted by Nucor's behavior in this proceeding as well as PEC's 2006 fuel case. PEC has not yet even filed its testimony in this case and Nucor has already sent PEC over 300 discovery requests. Such actions, on their face, demands that there be limits on discovery.

(10) Furthermore, in the 2006 fuel proceeding (Docket No. 2006-1-E), Nucor, via discovery requests, asked PEC to produce over sixteen (16) feet of paper. PEC gathered all such documents into a conference room for review by Nucor. PEC advised Nucor that the documents had been gathered and were available for Nucor's review and copying at PEC's office in Raleigh, NC, or, if Nucor simply wanted all the documents copied and mailed to Nucor's attorney, PEC would do so provided Nucor agreed to pay for the costs of copying and

mailing. Nucor did not exercise either option. Rather the documents simply sat in the conference until the proceeding was over. Nucor never visited PEC's office to review them or ask that they be copied and mailed at Nucor's expense. Pictures, taken at three different angles, of the amount of paper that was assimilated by PEC in response to Nucor's discovery that was never reviewed by Nucor are attached for the PSC's consideration.

(11) With this background, it is appropriate for the PSC to deny Nucor's motion to compel and grant PEC's motion for protective order. The ORS, the agency charged by the State to investigate utility matters and represent the public, is able to fulfill its obligations in PEC's fuel proceedings without propounding requests consisting of over 300 items and involving fifteen to sixteen feet of paper. The ORS limits its requests to those areas of information that are relevant and material and PEC readily provides the information requested. There is no basis to believe that Nucor, a single customer looking after only itself, requires such huge amounts of additional information. The Nucor discovery requests appear to be the result of someone sitting down and trying to think of every possible question to ask PEC regarding PEC's fuel procurement practices, operation of its system, and accounting for fuel costs. The sheer volume of the requests (over 300 items) and the fact that last year Nucor did not care enough to come to Raleigh to review documents or pay the cost to copy them indicate Nucor does not need or want all this information.

(12) PEC could go through each of the over 100 items in the second discovery request and object based upon relevance or burdensomeness. However,

PEC should not be forced to expend the time, effort and expense of doing so. Attorneys appearing before the PSC are required by Rule 103-867 to act in good faith. Nucor's discovery requests are not propounded in good faith. They are propounded without any concern for the burden upon PEC or the materiality of the information requested, and the documents requested are obviously not fully reviewed. This type behavior should not and must not be rewarded. Nucor should be forced to review all of the information provided to it and made available to it thus far in this proceeding before being allowed to propound any further discovery requests to PEC.

Wherefore, PEC moves the PSC to grant it protective order, relieving PEC of any obligation to respond to Nucor's second discovery request and denying Nucor's motion to compel.

Respectfully filed this 1<sup>st</sup> day of May, 2007.

**PROGRESS ENERGY CAROLINAS, INC.**

s/

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Len S. Anthony



**Attachment I**  
**Docket No. 2007-1-E**  
**PEC's Motion For Protective Order**  
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**Attachment I**  
**Docket No. 2007-1-E**  
**PEC's Motion For Protective Order**  
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**Attachment I**  
**Docket No. 2007-1-E**  
**PEC's Motion For Protective Order**  
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